



**U.S. Citizenship
and Immigration
Services**

**Non-Precedent Decision of the
Administrative Appeals Office**

MATTER OF E-, INC.

DATE: DEC. 22, 2017

APPEAL OF NEBRASKA SERVICE CENTER DECISION

PETITION: FORM I-140, IMMIGRANT PETITION FOR ALIEN WORKER

The Petitioner, a software design business, seeks to employ the Beneficiary as a QA software engineer. It requests classification of the Beneficiary as a member of the professions holding an advanced degree under the second preference immigrant classification. *See* Immigration and Nationality Act (the Act) section 203(b)(2), 8 U.S.C. § 1153(b)(2). This employment-based immigrant classification allows a U.S. employer to sponsor a professional with an advanced degree for lawful permanent resident status.

The Director of the Nebraska Service Center denied the petition, concluding that the record did not establish the Petitioner's continuing ability to pay the proffered wage. On appeal, the Petitioner asserts that it has the ability to pay the proffered wage in the totality of the circumstances.

Upon *de novo* review, we will sustain the appeal.

The Petitioner must establish its ability to pay the proffered wage of \$102,000 per year from the priority date of February 19, 2016, onward. 8 C.F.R. § 204.5(g)(2). For 2016, the Beneficiary's IRS Form W-2, Wage and Tax Statement, states total compensation of \$80,339.84, which was \$21,660.16 below the proffered wage. As such, the Petitioner must establish its ability to pay the difference between the wages paid to the Beneficiary and the proffered wage. Neither the Petitioner's net income nor its net current assets in 2016 were sufficient to pay the difference between the wages paid to the Beneficiary and the proffered wage.

However, we may consider evidence of a petitioner's ability to pay beyond its net income and net current assets, including such factors as: the number of years it has conducted business; the growth of its business; its number of employees; the occurrence of any uncharacteristic business expenditures or losses; its reputation in its industry; whether a beneficiary will replace a current employee or outsourced service; or other evidence of its ability to pay a proffered wage. *See Matter of Sonegawa*, 12 I&N Dec. 612, 614-615 (Reg'l Comm'r 1967).

In this case, the record indicates that the Petitioner was incorporated in 1999. The Petitioner submitted evidence showing substantial gross income that increased steadily from 2013 to 2016. The Petitioner employed 39 workers at the time of filing and has shown a growing and sustained ability to support its workforce through the payment of considerable wages and salaries from 2013

through 2016. The Petitioner also paid significant and increasing officer compensation from 2013 through 2016. Based on (a) the Petitioner's 18 years of doing business; (b) its substantial gross receipts; (c) the growth of its business; and (d) its large and increasing payroll, the Petitioner has established its ability to pay the difference between the wages paid to the Beneficiary and the proffered wage based on the totality of the circumstances in this case.

The record on appeal establishes the Petitioner's continuing ability to pay the proffered wage from the priority date onward. We will therefore withdraw the Director's decision.

ORDER: The appeal is sustained.

Cite as *Matter of E-, Inc.*, ID# 622841 (AAO Dec. 22, 2017)